IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

WAUSAU UNDERWRITERS INSURANCE COMPANY,	)	
Plaintiff,	)	Case No. 2:15-cv-12954
vs.	)	
RELIABLE TRANSPORTATION SPECIALISTS, INC., AMARILD USHE, and BURT HOLT,	)	
Defendants.	)	

WAUSAU UNDERWRITERS INSURANCE COMPANY'S
COMPLAINT FOR DECLARATORY JUDGMENT AND JURY DEMAND

Plaintiff Wausau Underwriters Insurance Company ("Wausau") files this complaint against Defendants Reliable Transportation Specialists, Inc. ("Reliable"), Amarild Ushe ("Ushe"), and Burt Holt ("Holt") (collectively, "Defendants"), stating as follows:

INTRODUCTION AND NATURE OF ACTION

1. This is an action pursuant to 28 U.S.C. § 2201, *et. seq.* and Rule 57 of the Federal Rules of Civil Procedure to determine and resolve questions of actual controversy concerning Wausau's obligations under a Commercial Policy issued by Wausau to Reliable (the "Wausau Policy") for a judgment entered in favor of Holt against Reliable and Ushe in an underlying lawsuit. Wausau seeks a declaration from this Court that its obligations are limited to those provided under

the terms of the Wausau Policy and that Wausau is not obligated to satisfy the judgment in any amount that exceeds its policy limit along with required ancillary amounts such as interest or other supplementary payments.

2. This action stems from an underlying lawsuit filed by Holt against Reliable, Ushe and a co-defendant (not a party to this action) relating to injuries allegedly suffered by Holt when he was struck by a tractor trailer operated by Ushe. At the time of the accident, Ushe was employed by Reliable. The underlying lawsuit is captioned: *Holt v. Amarild Ushe, et al.*, Wayne County Circuit Court, State of Michigan, Case No. 12-007202-NI (the "Holt Lawsuit").

3. On July 28, 2015, an Order of Judgment was entered in the Holt Lawsuit against Reliable, Ushe, and the co-defendant. The amount of the judgment entered against Reliable and Ushe jointly is $8,735,142.35. A copy of the Order of Judgment ("Judgment") is attached as Exhibit A.

4. Reliable and Ushe have asserted that Wausau is responsible to pay the entire amount of the Judgment entered against them in the Holt Lawsuit, including that part of the Judgment that exceeds Wausau's limit of insurance under the Wausau Policy.

5. Wausau denies any responsibility to pay that part of the Judgment that exceeds its $1,000,000 limit of insurance under the Wausau Policy plus any other

payment obligations required by the Wausau Policy and applicable law, such as interest or other supplementary payments.

6. Wausau requests: (a) that this Court declare Wausau's obligations with respect to the Holt Lawsuit are limited to those obligations required under the terms of the Wausau Policy and (b) that this Court declare that the Defendants are precluded from asserting any claim for bad faith, extra-contractual remedies, or similar relief against Wausau with respect to the Holt Lawsuit.

THE PARTIES

7. Wausau is an insurance company organized and existing under the laws of the State of Wisconsin, with its principal place of business in Boston, Massachusetts.

8. Reliable, upon information and belief, is organized and existing under the laws of the State of Indiana, with its principal place of business in Chesterton, Indiana. Reliable conducts business in Wayne County, Michigan.

9. Ushe, upon information and belief, is an individual residing in Wayne County, Michigan.

10. Holt, upon information and belief, is an individual residing in Wayne County, Michigan.[1]

JURISDICTION AND VENUE

11. Pursuant to 28 U.S.C. § 1332, this Court has jurisdiction over this action because the controversy is between citizens of different states and exceeds the minimum jurisdictional amount of $75,000, exclusive of interest and costs.

12. Venue is proper in the Eastern District of Michigan, Southern Division, pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims asserted in this Complaint occurred in this district.

THE WAUSAU POLICY

13. Wausau issued the Wausau Policy, Commercial Policy No. ATJ-Z91-454319-020, effective April 15, 2010 to April 15, 2011, to Reliable. The Wausau Policy has a $1,000,000 limit of insurance for liability coverage for any one accident. The Wausau Policy is in writing and constitutes the best evidence of its terms. A certified copy is attached as Exhibit B and Wausau hereby incorporates by reference the Wausau Policy as a written instrument pursuant to Fed. R. Civ. P. 10(c) as if fully set forth herein.

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[1] Because the Judgment was entered in Holt's favor in the Holt Lawsuit, he has an interest in this matter and Wausau has included him as a party defendant in this action. However, because the Holt Lawsuit is still pending, any information about the parties' settlement negotiations and related analysis or defense of the claims in the Holt Lawsuit is confidential and sensitive. As a result, Wausau will not produce such information through discovery in this action to Holt.

14. The Wausau Policy includes various insuring agreements, provisions, terms, conditions, exclusions and endorsements including, without limitation, those described below.

15. The Wausau Policy provides, in pertinent part, the following:

SECTION II – LIABILITY COVERAGE

A. Coverage

We will pay all sums an "insured" legally must pay as damages because of "bodily injury" or "property damage" to which this insurance applies, caused by an "accident" and resulting from the ownership, maintenance or use of a covered "auto".

* * *

We have the right and duty to defend any "insured" against a "suit" asking for such damages or a "covered pollution cost or expense". However, we have no duty to defend any "insured" against a "suit" seeking damages for "bodily injury" or "property damage" or a "covered pollution cost or expense" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends when the Liability Coverage Limit of Insurance has been exhausted by payment of judgments or settlements.

* * *

2. Coverage Extensions

a. Supplementary Payments

We will pay for the "insured":

(1) All expenses we incur.

(2) Up to $2,000 for the cost of bail bonds (including bonds for related traffic law violations) required because of an "accident" we cover. We do not have to furnish these bonds.

(3) The cost of bonds to release attachments in any "suit" against the "insured" we defend, but only for bond amounts within our Limit of Insurance.

(4) All reasonable expenses incurred by the "insured" at our request, including actual loss of earnings up to $250 a day because of time off from work.

(5) All costs taxed against the "insured" in any "suit" against the "insured" we defend.

(6) All interest on the full amount of any judgment that accrues after entry of the judgment in any "suit" against the "insured" we defend; but our duty to pay interest ends when we have paid, offered to pay or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the Limit of Insurance.

* * *

C. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for the total of all damages and "covered pollution cost or expense" combined, resulting from any one "accident" is the Limit of Insurance for Liability Coverage shown in the Declarations.

* * *

16. The applicable limit of insurance, as shown in the Wausau Policy's Declarations, is $1,000,000 for liability coverage.

THE HOLT LAWSUIT

17. The Holt Lawsuit asserts claims against Reliable and Ushe relating to injuries Holt allegedly suffered when he was struck by a tractor trailer operated by Ushe while Ushe was employed by Reliable.

18. Reliable and Ushe requested insurance coverage (defense and indemnity) from Wausau under the Wausau Policy for the Holt Lawsuit, and Wausau has provided Reliable and Ushe with a defense of the Holt Lawsuit.

19. A jury trial was held in May and June of 2015, and the jury reached its verdict on June 7, 2015.

20. On July 28, 2015, the court in the Holt Lawsuit entered the Judgment based on the jury's verdict, entering a total judgment against Reliable and Ushe in the amount of $8,735,142.35.

21. The defendants in the Holt Lawsuit have filed post-judgment motions in that action.

22. On June 10, 2015, an attorney retained by Reliable sent an e-mail to a representative of Wausau, in which the attorney stated that "[i]t is Reliable's position that [Wausau] is responsible for the excess judgment rendered against Reliable and Mr. Ushe."

COUNT I – DECLARATORY JUDGMENT

23. Wausau incorporates and realleges the allegations set forth in paragraphs 1-22 as if fully set forth herein.

24. Reliable's counsel has asserted that Wausau is responsible to pay the entire Judgment amount entered against Reliable and Ushe in the Holt Lawsuit, including that portion of the Judgment that exceeds Wausau's $1,000,000 policy limit.

25. Wausau has complied with the terms of the Wausau Policy with respect to the Holt Lawsuit.

26. Wausau has acted appropriately under applicable law and not in bad faith with respect to the Holt Lawsuit.

27. Wausau has not engaged in the arbitrary, reckless, indifferent, or intentional disregard of the interests of Reliable or Ushe with respect to the Holt Lawsuit.

28. Wausau seeks a declaration from this Court that (1) it has no obligation to satisfy the Judgment entered against Reliable and Ushe above the Wausau Policy's $1,000,000 limit of insurance plus any required ancillary amounts such as interest or other supplementary payments and (2) the Defendants are precluded from asserting any claim against Wausau for bad faith, extra-contractual remedies, or similar relief relating to the Holt Lawsuit.

REQUEST FOR RELIEF

WHEREFORE, Wausau respectfully requests and prays for the following relief:

a. A declaration that Wausau has no obligation to satisfy the Judgment entered against Reliable and Ushe in the underlying Holt Lawsuit in any amount above the Wausau Policy's $1,000,000 limit of insurance plus any required ancillary payments such as interest or other supplementary payments;

b. A declaration that the Defendants are precluded from asserting any claim for bad faith, extra-contractual remedies, or similar relief; and

c. Any and all other relief that this Court may deem just and proper.

Respectfully Submitted,

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Dated: August 19, 2015

DEMAND FOR TRIAL BY JURY

Plaintiff Wausau Underwriters Insurance Company hereby demands a jury trial in the above entitled action.

Respectfully Submitted,

s/Elaine M. Pohl

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Dated: August 19, 2015